

1 **FEDERAL ELECTION COMMISSION**

2
3 **FIRST GENERAL COUNSEL'S REPORT**

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5
6 MUR 7167

7 DATE COMPLAINT FILED: October 31, 2016

8 DATE OF NOTIFICATION: November 7, 2016

9 DATE OF LAST RESPONSE: January 11, 2017

10 DATE ACTIVATED: March 6, 2017

11
12 EARLIEST SOL: October 2, 2021

13 LATEST SOL: October 9, 2021

14 ELECTION CYCLE: 2016

15
16 **COMPLAINANT:**

Linda Lou Brown

17
18 **RESPONDENTS:**

Roy Blunt

19
20 Friends of Roy Blunt, Inc. and Gordon A. Elliot in
21 his official capacity as treasurer

22
23 Susan B. Anthony List, Inc.

24
25 Women Speak Out PAC and Emily Buchanan in her
26 official capacity as treasurer

27
28 **RELEVANT STATUTES
29 AND REGULATIONS:**

52 U.S.C. § 30116(a), (f)

52 U.S.C. § 30118

52 U.S.C. § 30125(e)(1)(A)

11 C.F.R. § 109.20(a)

11 C.F.R. § 109.21

11 C.F.R. § 300.61

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35 **INTERNAL REPORTS CHECKED:**

Disclosure Reports

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37 **FEDERAL AGENCIES CHECKED:**

None

CONFIDENTIAL

1 **I. INTRODUCTION**

2 The Complaint alleges that Susan B. Anthony List, Inc. ("SBA List"), Women Speak Out
3 PAC and Emily Buchanan in her official capacity as treasurer ("WSO"), Senator Roy Blunt, and
4 Friends of Roy Blunt, Inc. and Gordon A. Elliot in his official capacity as treasurer ("FRB")
5 (collectively, the "Respondents") violated the Federal Election Campaign Act of 1971, as
6 amended, (the "Act") and Commission regulations by making or accepting coordinated corporate
7 contributions.¹ The Complaint also alleges that Blunt solicited contributions outside the source
8 and amount limitations of the Act by asking the president of SBA List to raise money for his
9 campaign.² Respondents assert that the Complaint is speculative and deny they engaged in any
10 illegal coordination.

11 As set forth below, we recommend that the Commission find no reason to believe that
12 Blunt or FRB accepted excessive or prohibited in-kind contributions in violation of 52 U.S.C.
13 §§ 30116(f) or 30118. We also recommend that the Commission find no reason to believe that
14 SBA List or WSO made excessive or prohibited in-kind contributions in violation of 52 U.S.C.
15 § 30116(a) or 30118. Finally, we recommend that the Commission find no reason to believe that
16 Blunt violated 52 U.S.C. § 30125(e)(1)(A) or 11 C.F.R. § 300.61 by soliciting soft money in
17 connection with a federal election and close the file.

¹ Compl. at 4-5 (Oct. 31, 2016).

² *Id.* at 6.

1 **II. FACTUAL AND LEGAL ANALYSIS**

2 **A. Factual Background**

3 Blunt was a candidate for Senator in Missouri in 2016, and he was re-elected.³ FRB is
4 his principal campaign committee. SBA List is an IRS Code section 501(c)(4) non-profit
5 corporation.⁴ WSO is a federally registered independent-expenditure-only political committee
6 that is described as SBA List's "partner Super PAC."⁵ Marjorie Dannenfelser serves as
7 president of both organizations.⁶

8 During the 2016 election cycle, SBA List reported spending \$46,446.70 for independent
9 expenditures to support Blunt and oppose his general election opponent Jason Kander.⁷ WSO
10 reported spending \$85,878.91 for independent expenditures opposing Kander.⁸

11 The Complaint alleges that SBA List and WSO made prohibited corporate in-kind
12 contributions to FRB by disbursing funds for canvassing to re-elect Blunt.⁹ The Complaint
13 references a SBA List press release announcing that it would "make 250,000 voter contacts in
14 Missouri . . . through mail, digital advertising, and knocking 25,000 doors to turn out the pro-life

³ See Amended Statement of Candidacy, Roy Blunt (Oct. 25, 2016).

⁴ See Susan B. Anthony List, Inc. 2016 Annual Report at 1, Commonwealth of Virginia State Corporation Commission (May 27, 2016), <https://sccefile.scc.virginia.gov/ARSearch/Home/SearchResults> (enter Corporate ID 04845202); Form 990, 2015 Tax Return of Susan B. Anthony List, Inc. at 1 (Nov. 2, 2016).

⁵ See Statement of Organization, Women Speak Out PAC (Sept. 28, 2012); Women Speak Out 2016 Annual Report at 3, Commonwealth of Virginia State Corporation Commission (Aug. 30, 2016), <https://sccefile.scc.virginia.gov/ARSearch/Home/SearchResults> (enter Corporate ID 07805708); Susan B. Anthony List and Women Speak Out PAC 2016 Campaign Plan at 2, <https://www.sba-list.org/wp-content/uploads/2016/09/SBA-2016-Campaign-Plan.pdf>.

⁶ See SBA List 2015 Form 990 at 7.

⁷ 2016 Year-End Report at 18, Susan B. Anthony List (Jan. 31, 2017).

⁸ 2016 Post-General Report at 64, Women Speak Out PAC (Dec. 8, 2016).

⁹ Compl. at 3, 5.

1 base,” and the Complaint suggests that SBA List did so at Blunt’s request.¹⁰ The Complaint also
2 references an alleged telephone conversation between Blunt and Dannenfelsler during which
3 Blunt purportedly asked Dannenfelsler to “raise more money” and suggests that Blunt used this
4 call to request “potentially illegal support from SBA List for his race.”¹¹

5 Blunt and FRB deny that any coordination took place and characterize the Complaint’s
6 assertions as “unfounded.”¹² They note that the CNN article that forms the basis of the
7 Complaint’s allegations lacks any specific evidence of coordination and merely insinuates that a
8 telephone conversation between Blunt and Dannenfelsler took place on an unspecified date.¹³
9 Moreover, Blunt and FRB assert that the article does not allege that Blunt asked Dannenfelsler to
10 make expenditures supporting him; the only conduct alleged is that Blunt asked Dannenfelsler to
11 raise more money.¹⁴ SBA List and WSO assert that even if the alleged telephone conversation
12 occurred, it would not constitute coordination.¹⁵ They also state that the quotation in the CNN
13 article is unattributed.¹⁶

¹⁰ *Id.* at 3 (citing Press Release, Susan B. Anthony List, SBA List Ground Campaign Expands to Missouri to Elect Pro-life Blunt & Greitens (Oct. 13, 2016), <https://www.sba-list.org/newsroom/press-releases/sba-list-ground-campaign-expands-missouri-elect-pro-life-blunt-greitens>).

¹¹ *Id.* at 3, 5 (referencing Tal Kopan, *Donald Trump Voters Could Be Key to Missouri Senate Win for Democrats*, CNN (Oct. 14, 2016), <http://www.cnn.com/2016/10/14/politics/missouri-battleground-senate-race-jason-kander-roy-blunt/> (“CNN article”)).

¹² Blunt/FRB Resp. at 2 (Dec. 15, 2016).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ SBA List/WSO Resp. at 1 (Jan. 11, 2017).

¹⁶ *Id.*

1 **B. Legal Analysis**

2 **1. Coordinated Communications**

3 The Act prohibits any person from making, and any candidate or committee from
4 accepting or receiving, excessive or prohibited contributions.¹⁷ In addition, independent-
5 expenditure-only political committees are prohibited from making contributions to federal
6 candidates.¹⁸ The term “contribution” includes anything of value given for the purpose of
7 influencing a federal election.¹⁹ Further, any expenditure made by a person “in cooperation,
8 consultation, or concert with, or at the request or suggestion of, a candidate, authorized political
9 committee, or a national or state party committee” is considered an in-kind contribution.²⁰ These
10 expenditures are deemed “coordinated”²¹ and qualify as contributions to the candidate and must
11 be reported as expenditures made by the candidate’s authorized committee.²² Consequently, a
12 communication that is coordinated with a candidate or his authorized committee is considered an
13 in-kind contribution and is subject to the limits, prohibitions, and reporting requirements of the
14 Act.²³

15 A communication is coordinated with a candidate, the candidate’s authorized committee,
16 or agent of either, if it meets a three-prong test set forth in the Commission’s regulations: (1) it

¹⁷ 52 U.S.C. § 30116(a), (f); *see, e.g.* 52 U.S.C. § 30118(a) (illegal to make or knowingly receive corporate or union contributions). *See* Factual and Legal Analysis at 4, MUR 7018 (*Reform Washington, et. al.*).

¹⁸ Advisory Op. 2010-11 (Commonsense Ten).

¹⁹ 52 U.S.C. § 30101(8)(A)(i).

²⁰ *See* 52 U.S.C. § 30116(a)(7)(B)(i)-(ii); *see also* 11 C.F.R. §§ 109.20, 109.21(b).

²¹ 11 C.F.R. § 109.20(a).

²² 52 U.S.C. § 30116(a)(7)(B); 11 C.F.R. § 109.20(a).

²³ 52 U.S.C. § 30116; 11 C.F.R. § 109.21(b).

1 is paid for, in whole or in part, by a person other than the candidate or authorized committee;
2 (2) it satisfies one of five content standards in 11 C.F.R. § 109.21(c);²⁴ and (3) it satisfies one of
3 six conduct standards in 11 C.F.R. § 109.21(d).²⁵ All three prongs must be satisfied for a
4 communication to be considered coordinated under these regulations.²⁶

5 **a. Payment Prong**

6 The Complaint references expenditures reported by WSO on October 11, 2016, to pay for
7 “canvassers in Missouri,” but fails to provide specific information about the alleged activity or
8 identify any other alleged coordinated expenditures.²⁷ Nonetheless, the payment prong appears
9 to be satisfied because disclosure reports filed with the Commission indicate that SBA List and
10 WSO each reported independent expenditures supporting Blunt and opposing Kander.²⁸

²⁴ The content prong is satisfied if the communication at issue meets at least one of the following content standards: (1) a communication that is an electioneering communication under 11 C.F.R. § 100.29; (2) a public communication that disseminates, distributes, or republishes, in whole or in part, campaign materials prepared by a candidate or the candidate's authorized committee; (3) a public communication that expressly advocates the election or defeat of a clearly identified candidate for federal office; (4) a public communication that, in relevant part, refers to a clearly identified candidate, and is publicly distributed or disseminated in a jurisdiction 90 days or fewer before the candidate's primary election or nominating caucus in that jurisdiction; or (5) a public communication that is the functional equivalent of express advocacy. 11 C.F.R. § 109.21(c)(1)-(5).

²⁵ The six types of conduct that satisfy the conduct prong are: (1) a request or suggestion; (2) material involvement; (3) a substantial discussion; (4) use of a common vendor; (5) use of a former employee or independent contractor; and (6) republication of campaign material. 11 C.F.R. § 109.21(d)(1)-(6).

²⁶ 11 C.F.R. § 109.21(a); *see also* Explanation and Justification, Coordinated and Independent Expenditures, 68 Fed. Reg. 421, 453 (Jan. 3, 2003) (“Coordination E&J”). *See* Factual and Legal Analysis at 5, MUR 7029 (McGinty).

²⁷ Compl. at 3; *see* 48-Hour Report of Independent Expenditures, Women Speak Out PAC (Oct. 11, 2016).

²⁸ *Supra* n. 7 and 8.

1 suggestion.³² The request or suggestion standard is “the most direct form of coordination”
2 because the candidate “communicates desires to another person who effectuates them.”³³ Even
3 assuming that Blunt asked Dannenfels to “raise more money,” this statement does not satisfy
4 the “request or suggestion” test, which requires that the “request or suggestion [] be based on
5 specific facts,” not merely presumed.³⁴ The reported statement does not mention anything about
6 communications, and Blunt and FRB specifically deny that there was any coordination. Further,
7 the Complaint does not assert that any of the other conduct standards were satisfied by the
8 alleged telephone call, and the limited record does not provide enough information to conclude
9 that any of the other conduct standards apply. Therefore, the available information does not
10 support a conclusion that the conduct prong is satisfied.

11 Accordingly, we recommend that the Commission find no reason to believe that Senator
12 Roy Blunt, Friends of Roy Blunt, Inc. and Gordon A. Elliot in his official capacity as treasurer,
13 Susan B. Anthony List, Inc., and Women Speak Out PAC and Emily Buchanan in her official
14 capacity as treasurer violated 52 U.S.C. §§ 30116(a), 30116(f), or 30118 by receiving or making
15 excessive or prohibited in-kind contributions.

16 2. Solicitation

17 Candidates for federal office shall not “solicit, receive, direct, transfer, or spend funds in
18 connection with an election for federal office, including funds for any Federal election activity,
19 unless the funds are subject to the limitations, prohibitions, and reporting requirements of the

³² 11 C.F.R. § 109.21(d).

³³ Coordination E&J at 432.

³⁴ *Id.* at 431, 432.

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1 Act.”³⁵ Commission regulations define “solicit” as “to ask, request, or recommend, explicitly or
2 implicitly, that another person make a contribution, donation, transfer of funds, or otherwise
3 provide anything of value.”³⁶ The regulations define “direct” as to guide, directly or indirectly, a
4 person who has expressed an intent to make a contribution, donation, transfer of funds, or
5 otherwise provide anything of value, by identifying a candidate, political committee or
6 organization, for the receipt of such funds, or things of value.”³⁷

7 In order for the Commission to find reason to believe, there must be “sufficient legal
8 justification to open an investigation,” and the limited facts alleged in the Complaint do not give
9 rise to such justification.³⁸ The Complaint alleges that Blunt violated the Act by asking that
10 Dannenfelser have SBA and WSO raise soft money to be used in support of his campaign.³⁹
11 Although the CNN article states that Blunt asked Dannenfelser “to raise more money,” the
12 Complainant provides no further information regarding the statement or its context. In similar
13 cases, where limited facts were available and the parties denied wrongdoing, the Commission
14 found no reason to believe that the respondents violated the Act.⁴⁰ Accordingly, we recommend
15 that the Commission find no reason to believe that Senator Roy Blunt violated 52 U.S.C.

³⁵ 52 U.S.C. § 30125(e)(1)(A); 11 C.F.R. § 300.61.

³⁶ 11 C.F.R. § 300.2(m).

³⁷ *Id.* § 300.2(n).

³⁸ Statement of Policy Regarding Commission Action in Matters at the Initial State in the Enforcement Process, 72 Fed. Reg. 12,545, 12,545 (Mar. 6, 2007).

³⁹ Compl. at 6; *see* 52 U.S.C. §§ 30116(a)(1), 30116(a)(2)(A).

⁴⁰ *See* Factual & Legal Analysis at 3-5, MUR 6503 (Frank Guinta) (no reason to believe Guinta violated 2 U.S.C. § 441i(e) (now 52 U.S.C. § 30125(e)) where the Complainant's allegation that Guinta solicited soft money was based on a news report citing unattributed sources and Guinta denied any wrongdoing); Factual & Legal Analysis at 6-7, MUR 6657 (Akin for Senate) (no reason to believe Akin or Akin for Senate violated 52 U.S.C. § 30125(e)(1)(A) where Respondents denied wrongdoing and asserted that Complaint was speculative and contained no personal knowledge of alleged solicitation).

1 § 30125(e)(1)(A) and 11 C.F.R. § 300.61 by soliciting nonfederal funds in connection with a
2 federal election.

3 **III. RECOMMENDATIONS**

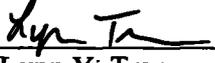
- 4 1. Find no reason to believe that Roy Blunt and Friends of Roy Blunt, Inc. and Gordon
5 A. Elliot in his official capacity as treasurer violated 52 U.S.C. §§ 30116(f) or 30118
6 by accepting excessive or prohibited in-kind contributions;
- 7 2. Find no reason to believe that Susan B. Anthony List, Inc. and Women Speak Out
8 PAC and Emily Buchanan in her official capacity as treasurer violated 52 U.S.C.
9 §§ 30116(a), 30116(f), or 30118 by making excessive or prohibited in-kind
10 contributions;
- 11 3. Find no reason to believe that Roy Blunt violated 52 U.S.C. § 30125(e)(1)(A) and 11
12 C.F.R. § 300.61 by soliciting nonfederal funds in connection with a federal election;
- 13 4. Approve the attached Factual and Legal Analysis;
- 14
- 15 5. Approve the appropriate letters; and
- 16
- 17 6. Close the file.
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